App. F. IX-4

Previous References

1928-29.

Law 59-28

File No. [illegible]

Serial Nos. [illegible]

1-3

Later References

P (33)

General and Revenue Secretariat.

Serial No. Three

Part B for January 1929

SUBJECT

Security Case of 1928 against H. V. Subramaniyam Iyengar and another.

Papers re: Security Case of 1928 against H. V. Subramaniyam Iyengar and another

Law-B (confd)

Secursy Proceedings Case

App. F III—21

General and Revenue Secretariat.

Law File No. 57 of 1928.

Serial No.

It is very important that the District Magistrate had insisted upon the examination of the Abbas Khan in spite of the adverse legal advice based upon the statements of the witness taken by the Police Inspector.

The result of his action has led to many complications.

In order to avoid further complications it was found necessary to give instructions to the Public Prosecutor to state clearly that it is not the object of the prosecution to discuss the case of Conspiracy in the Security proceedings & to object to the questions being directed towards Conspiracy.

As the Chief Court has ordered a copy of the Abbas Khan's statements being furnished it becomes necessary to take such steps to prevent the defence to prolong the proceedings & to ask any question in respect of Conspiracy.

The Public Prosecutor's suggestion may be approved & he be asked to move the Chief Court, if necessary to expunge the statement of the Abbas from the record under Sec 561A Cr. P. C.

3rd June 28

6.

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4-28

General and Revenue Secretarrat. | File No. of 192 .

Serial No.

3802
6/10

Request from the Ch. Court needs be considered at this stage Petitioner Pvt should object to Commissioner's report on Ethanol matter, which he has already told the Court, does form part of his case. If by-by are over-ruled we can then consider the matter

by
6/10/18
DS
6/10.

As per oral orders of the Secretary, a letter in terms of the member's ~~note~~ minute was drafted and handed over to the PPs yesterday -

Dsp
8.10.18

Since the decision by the Hon'ble I have considered the question of filing a revision application to the Chief Court.

I place herein my considered opinion, The case is posted to 15th inst.

The order may kindly be communicated before that date.

3rd Thursday

DS
12/10/18

I opine that a revision applic may

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—18-4

General and Revenue Secretariat. | File No. of 192 .

Serial No.

filed before the Chief Court to exclude evidence in regard to Mrs A. Khan's st. about the alleged conspiracy to arrest pet. Matter not the prosecution case: and it appears extremely improper that in security proc, a magte should take it upon himself to record evidence with regard to a st. made a witness many months after he has nothing more to say in the case.

Please submit to 2nd Member

ku
13.10.18

Subd to Second Member

ww
13/10

I agree, though I am not very hopeful of an order as asked for.

CSJ
13/10

Dr Law Secy with Complete file

ww
13/10

Secondary to 3 Members decision
Q. A was instructed to appear
jointly with the P. P. in the Rowlatt case

DD
15/10.

NOTE—Contn. sheet.

WD 0324 -GPB-60,000-24-5-27

2045/

General and Revenue Secretariat

Land File No. S 9

App. F. III—2]

of 1928.

Serial No.

letter no: 766 dated 12/11 Nov. 1928 from C.A. forwarding Copy of order passed by the Chief Court in CrRP 109/28-19 filed on behalf of Govt.

The orders of the lower Court allowing cross-examination of PW 11 as regards Conspiracy etc is set aside, and it is found that such matters ~~are outside the scope~~ do not form the information on which the preliminary order is passed and as such outside the scope of the enquiry as under Sec 117 Crp Code.

Submitted for perusal.

5142 17/11

MP 16/11/28

3rd Member) 16/11

16/11

16/11

19.11.28

19/11

19/11/28

General and Revenue Secretariat.

File No. of 192 .

Serial No.

This is a reference from the Public Prosecutor Bangalore, seeking instructions regarding further steps to be taken in Security Cases.

The Public Prosecutor states that all these accused are prosecuted for substantive offences on the same facts & that the prosecution is pending before the City Magistrate.

As observed by Mr Justice Prinsep in 27 Calc page 784, "No doubt, they (the petrs) may have been liable to punishment on conviction in a regular trial for any of these acts, & he thinks that that was the proper mode of dealing with the case . . . ."

I am on the learned Judge's observation.

"If this order requiring ~~Security~~ the petitioners to give security for good behaviour be maintained, ... the petitioners would in such a trial be very seriously prejudiced, by an order for security for good behaviour against them."

This view was followed in 9. C.W.N. 898. Hence ~~I~~ I am of opinion that the

WD 01714—GPB—30,000—18-4-21

General and Revenue Secretariat.

File No. of 192 .

Serial No.

prosecution against the accused under punitive sections of Cr. P. C when they are being prosecuted on the same set of facts for substantive offences under the Indian Penal Code is inappropriate.

If appd, the P. Pr will be instructed to withdraw the case

3rd Asstt

8
4.12

I agree in the view that the security prdgs may be withdrawn in view of the substantive case on the same facts was put against the same accused persons. Please submit to the Dewan

Dewan

hm
4.12.28

I think the case may be put to Dewan as he is coming here this evening.

Mule
4.12.28

I agree

MS
4-12-28

NOTE—Contn.

W.P. 01716—GPS—50,000—19-4-28

General and Revenue Secretariat. | File No. of 192 .

Serial No.

I am asked to note the real circumstances which compelled the withdrawal of the Security case against J.Bhima Rao and others. I called for a detailed report from the Public Prosecutor which is herein enclosed. It shows clearly how the case was made to take a complicated turn and how events happened to crowd the real issues, as also the circumstances that prompted its withdrawal.

The first wrong step taken was that of the District Magistrate in ~~xxxxxxxx~~ insisting upon the examination of Mr. Abbas Khan in spite of the Public Prosecutor's advice to contrary based upon the report of the Prosecuting Inspector who stated that Mr. Abbas Khan did not know anything of the disturbances in front of his house. Again when the City Magistrate Mr. Sadasiva Rao rightly overruled cross examination on the voluntary statements of Mr. Abbas Khan as to the object of the crowd, it was improper on the part of the District Magistrate to have ordered transfer of the case to the Special I Grade Magistrate's Court. The third blunder that was committed was when the Special Magistrate ordered issue of summons to the Additional District Magistrate for producing the statement of Mr. Abbas Khan given in Camera before him and especially in face of the clear statements made in court by the Public Prosecutor denying that conspiracy or sedition was

NOTE—Contn. Sheet.

WD 01714—GPB—30,000—1

General and Revenue Secretariat.

File No. of 192 .

Serial No.

part of the prosecution case. Further complications were created by the order of Mr. Justic Srinivasa Iyer in granting a copy of the statement to the accused. I submit the learned Judg failed to take notice of the important decision in 30 Mad. 466 where Benson & Wallis J.J. hold that even "an accused person under remand is no before the commencement of the preliminary inquiry, entitled to be furnished with copies of statements made on oath by various persons a recorded by the Magistrate under Section 164 of the Code of Criminal Procedure". The learned Judge relied on 16 Mad. 421 and 29 M. 89 to come to the conclusion that proceedings under Section 164 Cr. P.C. are judicial proceedings within the meaning of Section 193 I.P.C. without noticing that these decisions have been emphatically criticised and dissented in a recent Full Bench decision of the Bombay High Court reported in (1921) 60 I.C. 593. The grant of a copy of the statement made before the Additional District Magistrate complicated the real issues in Security case and the accused naturally took advantage of it to make the issue of conspiracy a live issue in the case and to prolong the proceedings to such an extent as to make its further progress impossible.

The situation was a little bit eased by the pronouncement of Mr. Justice Ramachandra Rao in C. R.P.109 of 28-29 filed on behalf of Government

NOTE—Contn. Sheet.

WD 91714—GPB—30,000—18-4-28

Serial No. 1

wherein he correctly showed the scope of the enquiry under Section 117 of Cr. P.P.Code and held that questions regarding conspiracy &c. were really irrelevant in the Security case. But soon the accused took opportunity of taking the matter before a Full Bench of the Chief Court. And after it was thus taken up by the Full Bench the accused were charge sheeted for substantive offences before the City Magistrate on the same facts as those on which they were being tried in the Security proceedings. The further prosecution of the latter became inappropriate (Vide 5 Mys. L.J. 149) at 151). Since the reference to the Full Bench had already been made when prosecution for substantive offences were launched and the records were not available in the lower court, the question of withdrawal was naturally taken up as soon as the Full Bench decided the case before them. It is thus clear that the case was withdrawn or rather its further progress was stopped under Section 249 Cr. P.C. simply because its further progress became inappropriate and not in any way to screen Mr. Abbas Khan. The several statements made by the Public Prosecutor and the statement made by the Government Advocate on 17th Decembe 1928 clearly show that the prosecution did not even rely on the evidence of Mr. Abbas Khan for the success of the case and consequently it

NOTE—Contn. Sheet.

WP 01714—[illegible]—18-4-28

General and Revenue Secretariate

File No. of 192 .

Serial No.

it cannot have tried to screen him from cross examination in order to help the w

As per instructions of the 3rd Hon
I beg to submit the same.

Dewan. 31/12/28

Please put me up a
copy of my letter from the
Mr
1-1-29

The papers
may be sent to P.S. to Hon
with a copy of this letter on the
subject

Mr
12/1

7-10-28

The Public Prosecutor,

Bangalore Division.

With reference to your letter dated 6-10-1928, re. the Security Proceedings in the Special First Class Magistrate's Court, Bangalore I am directed to inform you that the question of going to the Chief Court need not be considered at this stage. You have object to any Cross Examination with reference to any extraneous matter, which you have already told the Court do not form part of the case. If your objections are over-ruled the situation can then be considered.

I have the honour to be,

Sir,

Your most obedient servan

For Secretary to Government.

Law Department.

O P I N I O N.

Under Section 107, Credible informati is the foundation for the exercise of jurisdiction by the magistrate (see Ganesh 1 12 A.L.J. 336). It is upon the particulars furnished by the police that the magistrate passes an order under Section 112 requiring the accused to show cause and ~~xxxxx~~ setting forth the substance of the information received, amount of the bond to be executed, the term for which it is to be in force and the number, character and class of sureties if any required. Under Section 117 he shall proceed to enquire into the truth of the information upon which action has been taken and to ~~take~~ such further evidence as may appear necessary It is not the case of the Prosecution that the over-throwing of Government was the object of the crowd nor did the prosecutior laid the information that the accused were concerned in the offence of overthrowing the Government. When this is not the information which is made the subject of the preliminary order, the magistrate is precluded from enquiring into this allegation made by a certain witness examined for the prosecution.

The Public Prosecutor has emphatically stated before the magistrate that he does not charge the accused with conspiracy to overthrow the Government and in consequence he urged that any evidence as to that ought not be admitted in evidence. The magistrate was entirely in error in order-

ordering that he has power to admit such evidence and allow the accused to cross examine Mr. Abbas Khan on that point. Since his function was only to ~~examinex~~ enquire into the truth of the information upon which action has been taken under Section 112, he has no jurisdiction to enquire into the truth or otherwise of the conspiracy which did not form the subject matter of the information. Hence a revision would lie to the Chief Court to quash his illegal order. Besides this point the magistrate has committed several irregularities. His action in summoning a document which was in the possession of the Additional District Magistrate was not justified in view of the fact that he had no power to enquire into the case of conspiracy. The various orders that he has passed overruling the objections taken by the Public Prosecutor show clearly that he is prejudiced and no impartial trial can be expected at his hands. The order of the District Magistrate in transferring the case is also not justifiable It is for these reasons, I am of opinion that in the interests of justice, an application should be filed before the Chief Court to revise the order of the magistrate and that to allow Mr. Abbas Khan being cross examined on the question of conspirary would materiall prejudice the likely action to be taken by the Additional District Magistrate and by the Bangalore Disturbances Committee who are engaged in examining this question. The reasons why it is prejudicial to allow the

examination at this stage are:--

1st, that there will be no opportunity to offer additional evidence upon this question by the prosecution either to rebut or to corroborate the evidence of Mr. Abbas Khan.

Secondly that any conclusion drawn by the magistrate will after all be an obiter dictum and as such not useful to any one.

Thirdly, the question whether the xxx x witness will be privileged from making any statement will arise for consideration and it is doubtful whether the witness will be privi leged in making any statement in a proceeding held by a magistrate who had no jurisdiction to enquire into that offence.

It is inexpedient and unjustifiable for the prosecution to commit a witness to such a perilous position knowingly that he may be exposed to such danger

Fourthly, it is unthinkable that the magistrate should be voluntarily bent upon entering into that enquiry at the instance of the accused who have got an ulterior motive to encompass the ruin of a witness and the prosecution would be countenancing such a course if it fails to take such step as one allowed by law to correct a palpable error committed. Any decision by such a magistrate who has shown such strong tendency to discredit any evidence would materially effect the proceedings held by the Additional District Magsirate and by the Committee.

Fifthly, there will be a good ground for complaint from a witness against the Government for compelling him to be examined as

a witness in a case in which he has already stated that he knew nothing about the action of the leaders and thus putting him into great inconvenience caused by ~~the~~ suit being filed against him for damages and for criminal prosecution by persons who are his avowed enemies.

Under these circumstances I feel bound to bring to the notice of the Government these facts so that the Government may be exonerated from all blame in the matter by filing a revision petition to the Chief Court and showing that all legitimate steps have been taken by Government in the matter.

Legal Remembrancer.
12. 10. 1928.

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Monday the 5th day of November 1928.

Before

MR. JUSTICE M. RAMACHANDRA RAO.

—

CRIMINAL REVISION PETITION NO.109 OF 1928-29.

The Government of Mysore. Complainant. Petitioner.

(By Mr. K. Shankaranarayana Rao,
Government Advocate.)

-VS-

1. H.V. Subramanyam,
2. Ram Lal Thivari,
3. J. Bheema Rao. Accused. Opponents.

(By Messrs. L.S.Raju and D. Shama Rao.)

Criminal Revision Petition against the order dated 8th October 1928 passed by the Special First Grade Magistrate, Bangalore, in Criminal Miscellaneous Case No. 31 of 1928-29 permitting the Cross Examination of the prosecution witness No.11 in regard to the conspiracy or sedition among the several points referred to therein.

This petition coming on for hearing on Saturday the 3rd day of November 1928, the Court pronounced the - following:-

O R D E R.

The Petitioner seeks to revise an order passed by the Special First Class Magistrate, Bangalore, in Criminal Case No.31 of 1928-29 overruling the objection urged on behalf of the prosecution against the cross-examination of prosecution witness No.11 by the defence counsel on the - allegation

allegation of conspiracy made by the said witness in his examination-in-chief.

It was contended on behalf of the petitioner that the question of conspiracy was irrelevant for purposes of the present enquiry and that by the order of the lower court, the scope of the enquiry has been unnecessarily enlarged beyond the limits permissible under the law. On the other hand, it was contended for the opponents that as the existence of a conspiracy had been spoken to by prosecution witness No.11 in examination-in-chief, they had a right to cross-examine him on the point and show to the court that there was no such conspiracy at all. Both the order sheet in the case and the order under revision show that representations were made to the lower court from time to time urging that the question of conspiracy was quite foreign to the present enquiry but for some reason or other those representations do not seem to have appealed to the learned Magistrate. This is a case purely under Section 107 of the Code of Criminal Procedure and a definite information has been laid before the lower court as to why the opponents should be bound over for keeping the peace. As required by Section 117 of the Code, the Magistrate has only to enquire into the truth of the said information. It is admitted on both sides that conspiracy does not form any portion of the information on which the lower court has been asked to take action against the opponents nor is any conspiracy even very remotely hinted at in the information. Such being the case, any attempt to test the truth or otherwise of the alleged conspiracy would

clearly

clearly fall outside the purview of Section 117. In other words, the question of conspiracy being an irrelevant topic, cross-examination for the mere purpose of contradicting the witness on it should not be allowed.

It was also urged for the petitioner that a portion of the deposition of prosecution witness No.11 which relates to the conspiracy might be expunged from the record in the exercise of the inherent powers vested in this court by the new Section 561 A of the Code. As against this, the -- opponents urge that a prayer to that effect has not been made in the present petition and that without a proper -- application for that purpose and due notice thereof to the opponents, the petitioner's prayer should not be granted. I entire agree with the learned counsel for the opponents and hold that their objection is well founded and ought to prevail. In these circumstances, it becomes unnecessary to consider whether this is the proper stage for a request of this kind to be made on behalf of the petitioner and whether compliance with such a request comes within the - scope of Section 561 A.

In his order, the learned Magistrate in a way - suggests that his view about the right of the opponents to cross-examine prosecution witness No.11 about conspiracy would have been different if certain admissions had been made by the Public Prosecutor. I fail to understand how the learned Magistrate was justified in calling upon the Public Prosecutor to make any admission or statement in respect of a matter which he does not rely upon for purposes of the prosecution case and which was merely mentioned by one of the witnesses for the prosecution. The learned Government Advocate suggested that the answer -

recorded

recorded in the examination-in-chief of this witness about conspiracy might not have been elicited by the Public Prosecutor by questioning the witness but - might have been volunteered by the witness himself. However, as the answer is perfectly irrelevant for the enquiry that is now proceeding, it serves no useful purpose to try to conjecture now how it happened to come on the record. I should think that it was as much the duty of the defence as of the prosecution to guard against irrelevant matters getting into the record of the case. The duty in this respect is in no way less onerous on the part of the lower court.

It was contended by the learned counsel for the opponents that the order under revision being an interlocutory one, this court ought not to interfere with it. He had however to admit that in exceptional circumstances the power of interference can be and has been exercised by this court in various stages of - proceedings pending before subordinate criminal courts. The subject matter of the present enquiry is a very simple one and it is not proper to complicate it by introducing into it matters like conspiracy, sedition and so on. I think it would seriously affect public interests if the order of the lower court is allowed to stand. I therefore consider that this is a fit case for interference in its present stage. I am further of opinion that under the circumstances of the present case, conspiracy or sedition is too - serious a matter and that the procedure of the lower court in allowing cross-examination on it, although it is perfectly unconnected with the subject of the

enquiry,

enquiry, is so gravely irregular as to amount to an -- exceptional circumstance justifying interference by this court in the exercise of its revisional jurisdiction under Section 439 Criminal Procedure Code, or of its inherent powers under the new Section 561 A which is clearly aimed at preventing an abuse of the process of the court as in the present instance.

In my opinion, instead of repeatedly calling upon the Public Prosecutor to make some admission or statement, the learned Magistrate would have done well to have himself calmly considered whether it was possible for any Public Prosecutor to meet the wishes of the court in such a -- matter and even if an admission or statement were made as required, what bearing it would have on the ultimate -- decision in the case.

I therefore set aside the order of the lower court and direct that no cross-examination on the question of conspiracy or sedition should be allowed. It is however not intended by this order to restrict in any manner the discretion of the lower court in allowing the exercise of the right which the opponents have to further cross-examine prosecution witness No.11, if they so desire, on matters other than conspiracy or sedition. It is hoped that the lower court will proceed with the case as expeditiously as it can and if necessary by taking up the case day after day until it is finally closed.

SD/- M. RAMACHANDRA RAO.
J U D G E.

"C o p y"

CSN. GOVERNMENT ADVOCATE.

Bangalore,
4th December 1928.

From

The Public Prosecutor,
Bangalore Division.

To

The Legal Remembrancer and
Secretary, Law Department,
Government of Mysore.

Sir,

I have the honour to report as follows and seek instructions.

The security case against Messrs. H.V.Subramaniyam, Ram Lal Thivari and J.Bneema Rao is posted to tomorrow and will be taken up day after day. The said accused are charged with substantive offences on the same facts. These two cases are being tried by the City Magistrate. According to principles laid down in 27 Cal. 781 and 9 C.W.N. 898 (Wodroffe's Criminal Procedure Code page 93) the further prosecution of the security case seems to be inappropriate. Under these circumstances I solicit orders.

I beg to remain,
Sir,
Your most obedient servant,

B. N. Vijaya Deva

Public Prosecutor.

7th Dec 1928

Dear Mr Madhava Rao.

I received your D.O. just now.

I just returned home from the meeting of the Bangalore D. I. Committee which meets again this afternoon.

I am therefore unable to attend the Council meeting today.

As regards Security case, I have left the file ~~with~~ in the office. If you kindly ask my personal clerk he will give it. Please let the orders passed on the Resolution etc. Yours sincerely

B. Narasimha

G.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

As per orders, a draft of a letter

2nd/3 224

In reply please refer to No. 334

Tel. Address :— "JURIST," Bangalore.

OFFICE OF THE GOVERNMENT ADVOCATE IN MYSORE,

Bangalore....10th....November....1928.

14/11

Law 59-28-1

FROM

K. SHANKARANARAYANA RAO, ESQ., M.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

14/11

To

The Secretary to the Government
of H. H. The Maharaja of Mysore,
Law Department, BANGALORE.

SIR,

In continuation of this office letter No.334 dated the 5th November 1928, I have the honor to forward herewith, for the information of Government, a copy of the order passed by the Chief Court in Criminal Revision Petition No.109 of 1928-29 on their file, (Government of Mysore VS. H.V.Subramanyam and two others).

I have the honor to be,
Sir,
Your most obedient servant,

GOVERNMENT ADVOCATE.

CSN.

N.B.—Should routine notes be written on small slips the notes must be copied, or slips pasted on this form.

A. P. F. VI. G[illegible]

SUBJECT.....

.....

.....

Section Law

File No. 59-28

Diary No. of letter replied to.....

Serial No. 2

No. 3343

General and Revenue Secretariat

( )

th *192*

To The Public Prosecutor
Bangalore

Date of issue 22/12/28

Sir,

I am desired to request you to send a detailed report about the Security Proceedings case from the day it began to the day on which it was withdrawn, with special reference to the circumstances under which Mr Abbas Khan was put as a witness and the various stages of his

List of enclosures.....

Copied by .....

Examined by .....

over

WD0925—GPB—80,000—26-5-27

Examination ~~in Court~~ &
Cross-examination in Court.

The matter may be treated
as very urgent.

Thanks

S.V.
Legal Adv
& Legal Asst

BANGALORE,

Dated. 30/12/28.

Law 89-28-3

From

THE PUBLIC PROSECUTOR,

Bangalore Division,

T O

THE LEGAL REMEMBRANCER &

SECRETARY LAW DEPARTMENT,

B A N G A L O R E.

S i r,

I have the honour to submit a short report of the Security Case.

On 28th July 1928 proceedings were instituted in the Court of City Magistrate, Bangalore on information laid by Mr. T.V.Krishna Moorty, - Inspector "C" Division, Bangalore City against Messrs. H.V. Subramanyam, Ram Lal Thivari & J. Bheema Rao. The information is as follows:-

On the plea that a Ganesha idol should be installed on a pedestal newly constructed in the Hindu A.V. School in Arcot Sreenivasachar Street the accused have instigated the boys of the School to strike work and to commit acts of violence in other schools, the boys of which declined to strike work. They have also instigated the boys of the said school to sit "Dharna" in front of the School causing obstruction to traffic, and inconvenience and annoyance to the people in the street. The accused by these and other acts and by their speeches and writing are provoking an imminent breach of the peace.

This information contained a list of thirteen witnesses amongst whom was Khan Bahadur Abbas

Khan, President, Bangalore City Municipality. The City Magistrate passed a preliminary order on 28-7-28 calling upon the accused to show cause why they should not be bound over for 4 months. I was engaged to conduct the case on 6-8-28 when I filed an additional list of witnesses and I began to examine witnesses. As this was not a case in which police investigated I deemed it desirable to cause the police to make enquiries as to the information that Mr. Abbas Khan could give regarding the events that occured in front of his house after 24th July 1928. Since the Prosecuting Inspector informed me that Mr. A. Khan did not personally know of anything of the disturbances in front of his house I spoke to the District Magistrate, Bangalore in the matter and urged that under the circumstances it was neither desirable nor necessary to examine Mr. A. Khan. But the District Magistrate insisted on the witness being examined and he was accordingly examined. During the course of his examination the witness volunteered the statement that the crowd in front of his house "had been got up as one of the steps to overthrow the Government, remove the Dewan and vilify him (the witness)".

The City Magistrate before whom the case was being tried overruled cross-examination on this voluntary statement apparently on the ground that it was absolutely irrelevant in the enquiry under S.117 Criminal Proceedure Code. The accused moved the District Magistrate, Bangalore for a transfer of the case and he ordered it to be taken up and tried by the Special I Grade Magistrate, Bangalore.

The case commenced on 5-9-28 in this court. Elaborate cross-examination was allowed on 6-9-28 during the course of which the witness (Mr Abbas Khan

olunteered that he made a statement in camera before he Additional District Magistrate, Bangalore. ~~The~~ During the course of my argument on 8-9-28 I stated that the calling for the statement was not necessary as even granting that the document would shake the evidence of the witness I was prepared to say that I was not going to rely upon the evidence of the witness. On this the court remarked "Do you admit that? Do you make a statement that you are not relying on this evidence?" To which I replied "Yes your honour as it is the witness was cross examined in great detail again on 11-9-28 and 12-9-28 in spite of my statement to the court on 8-9-28 that I was not relying on the evidence of the witness. Not being satisfied with such elaborate cross examination the defence wanted to make the question of conspiracy to overthrow the Government a live issue in the case and the court ordered an issue of summons to the Additional District Magistrate and that Magistrate claimed prevelege - under S/24 Evidence Act. Elaborate arguments were - heard whether the claim put forward by the Additional District Magistrate was tenable or not.

On 18-9-28 I stated to the Court as follows:- "So far as this security case is concerned I do not press the question of conspiracy or sedition and I do not raise them as an issue in this case as stated by Mr. Abbas Khan I beg to state therefore that matter need not be gone into by this court. - From that point of view I wish to urge that the statement of Mr. Abbas Khan before the Additional District Magistrate is extraneous, irrelevant and beyond the scope of this case. All that matter spoken to by Mr. Abbas Khan therefore in reference to this would not be pertinent"

I continued thus - "I am not going to press the statement of Mr. Abbas Khan so far as the object of "overthrowing the Government and removing Dewan" is concerned. This statement is not relevant in this security case. The charge made against the accused by Mr. Abbas Khan with reference to the object of getting up of the crowd is not pressed and is withdrawn. Again I stated "It is not my case that the accused are charged with conspiracy or sedition. My case is only under S.107 Criminal Procedure Code. It is the witness who has volunteered this statement. I am contending that that portion of the evidence is not at all my case. So far as this case is concerned I am not charging the accused with sedition or conspirac My charge is that the accused are to be bound over - according to me because by their acts they are likely to commit a breach of the peace in future also. This is all my case".

Again I reiterated that "my case is that the prosecution is not for sedition or conspiracy. I have not put forward that case. I am even prepared to say that Mr. Abbas Khan's evidence might be ignored and not taken into consideration at all."

In spite of my arguments and statements as above the court passed an order holding there was no privelege with respect to the statement of Mr. Abbas Khan before the Additional District Magistrate. Thus the case took a new turn unfortunately in spite of all efforts, on behalf of the crown, which in effect was to prolong the proceedings and cloud the real issues in the case. Arguments were advanced to show that this statement could not be availed of by the accused. - On 21-9-28 I filed a written statement as follows:-"

"It is not the case of the complainant

that accused are charged with conspiracy or sedition in these Security Proceedings. The evidence of P.W.11 Khan Bahadur Abbas Khan on this point need not be considered by the Court." After ~~future~~ examination of the last witness for the prosecution I closed the case on this date. The magistrate passed an order holding that the accused are not entitled to a copy of the statement of Mr. Abbas Khan before the Additional District Magistrate. On this the matter was taken up to the Chief Court by the accused. Mr. Justice Sreenivasa Iyer passed an order on 5-10-28 holding that the accused are entitled to the copy applied for by them and directed a copy to be given to them. The case was taken up on 8-10-28 when again Mr. Abbas Khan was cross-examined on the question of conspiracy. I again contended that my case was not one of conspiracy and sedition that all questions relating to this matter were irrelevant and ought not to be allowed. I reiterated again. "The case for the prosecution is under S.107 Criminal Procedure Code to bind over the accused to keep the peace. To prove the case some witnesses were examined. Mr. Abbas Khan made a statement regarding conspiracy or sedition. But that is not a charge I have asked the accused to meet. It is for the prosecution to say which is their case and it is not for the accused to say that against the wishes of the prosecution this matter or that should be gone into. The complainant refuses to be drawn to the elucidation of the question of conspiracy or sedition in this court. I ask the accused not to meet the charge of conspiracy or sedition it naturally follows that the evidence hearing on this point need not be considered either by the Court or the accused." I pressed for an order on my objections. The court passed an order on 9-10-28 allowing further

cross-examination of the witness Mr. Abbas Khan on questions of conspiracy or sedition. The Government Advocate filed a Revision Petition in the Chief Court against this order. Mr. Justice Ramachandra Rao in his order dated 5-11-28 was pleased to observe that as conspiracy or sedition is outside the scope of enquiry under S.107 Criminal Procedure Code Cross-examination should not be allowed to be directed towards these points. On 6-11-28 the witness Mr. Abbas Khan was cross-examined in detail as regards "clique" or conspiracy to which objections were taken. An adjournment was granted to the accused to approach the Chief Court once again for a ruling whether the two orders of the Chief Court were in conflict or not. The Accused filed a Revision Petition which came on before a Full Bench of the Chief Court which pronounced orders on 3-12-28. In the meanwhile the Additional District Magistrate, Bangalore who was holding a Preliminary Enquiry into the Bangalore Disturbances drew up on 14-11-28 three cases for substantive offences against these accused which were transferred to the City Magistrate and were actively being prosecuted in that Court. As per rulings in 27 Cal.781 9 C.W.N.898 which was approved and followed by our Chief Court in 5 Mysore Law Journal the further prosecution of the security proceedings became inappropriate as soon as the accused were arraigned for offences on the same facts as those on which they were tried to be bound over under S.107 Criminal Procedure Code. I therefore made a reference in the matter. The District Magistrate directed me to apply under S.249 Criminal Procedure Code for the Security Proceedings to be dropped which I did on 10-12-28. On 17-12-28 the Government Advocate appeared in the case and made a statement

which I submit was practically similar to my statements and arguments already submitted to the Court from time to time. The accused withdrew their objections and they were discharged.

I have the honour to be,

S i r,

Your most obedient servant,

B. N. Vijaya Deva.

~~PUBLIC~~ PUBLIC PROSECUTOR.

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